

OPEN MEETING ITEM



0000070017

COMMISSIONER
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: APRIL 3, 2007

DOCKET NO: T-04298A-04-0930

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

NEUTRAL TANDEM-ARIZONA, LLC
(CC&N/RESELLER/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

Company has waived the 10 days for filing of exceptions

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

TO BE DETERMINED

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

RECEIVED

2007 APR -3 P 2:47

AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

APR -3 2007

DOCKETED BY	nr
-------------	----

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 NEUTRAL TANDEM-ARIZONA, LLC FOR A
10 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD AND
FACILITIES-BASED LOCAL EXCHANGE AND
LONG DISTANCE TELECOMMUNICATIONS
SERVICES WITH ARIZONA.

DOCKET NO. T-04298A-04-0930

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: December 4, 2006; January 10, 2007; March 1, 2007

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

14 APPEARANCES: Mr. Michael W. Patten, ROSHKA, DeWULF &
15 PATTEN, on behalf of Neutral Tandem-Arizona, LLC;
and

16 Ms. Maureen A. Scott, Staff Attorney, Legal Division
17 on behalf of the Arizona Corporation Commission.

18 **BY THE COMMISSION:**

19 On December 27, 2004, Neutral Tandem-Arizona, LLC, ("Applicant" or "Neutral") submitted
20 to the Arizona Corporation Commission ("Commission") an application for a Certificate of
21 Convenience and Necessity ("Certificate") to provide resold long distance and local exchange,
22 facilities-based local exchange and facilities based long distance exchange and private line
23 telecommunications services within the State of Arizona. Further, the Applicant petitioned the
24 Commission that its proposed services be classified as competitive.

25 On October 3, 2006, the Commission's Utilities Division ("Staff") filed a letter of
26 administrative completeness on Neutral's application.

27 On October 13, 2006, by Procedural Order, the matter was set for hearing to begin on
28 December 4, 2006.

1 On December 4, 2006, a full public hearing was convened before a duly authorized
2 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Staff appeared
3 through counsel; however, the Applicant failed to appear. After the hearing, the Applicant and Staff
4 telephonically contacted the Hearing Division, and requested that the matter be reset for hearing.

5 On December 8, 2006, by Procedural Order, the matter was scheduled to reconvene on
6 January 10, 2007.

7 On January 9, 2007, Staff and the Applicant contacted the Hearing Division and requested
8 that the January 10, 2007 hearing be for public comment only and that evidentiary portion of the
9 hearing be continued because the Applicant would be filing an amended application in this matter.

10 On January 10, 2007, public comment was taken in this matter and the Applicant filed an
11 amended application.

12 On January 17, 2007, by Procedural Order, the hearing on the Applicant's amended
13 application was set to reconvene on February 6, 2007.

14 On January 25, 2007, Staff filed a Letter of Insufficiency and sent its sixth set of data requests
15 to Neutral.

16 On January 26, 2007, Staff filed a Request for Extension of Time to file its Supplemental
17 Staff Report, and requesting that the hearing date be reset in this matter.

18 On January 31, 2007, the Applicant filed a Response to Staff's Request for an Extension of
19 Time and opposed Staff's request. On the same date, a telephonic Procedural Conference was
20 conducted with Staff and the Applicant to discuss Staff's request for an extension of time to file its
21 Supplemental Staff Report.

22 On February 2, 2007, by Procedural Order, Staff was granted an extension to file its
23 Supplemental Staff Report, and the hearing in this matter was rescheduled to commence on March 1,
24 2007.

25 On February 22, 2007, Applicant filed a request for its witnesses to appear telephonically in
26 this matter.

27 On February 23, 2007, Staff filed its Supplemental Staff Report, and recommended approval
28 of Neutral's amended application.

1 On February 27, 2007, Applicant's request to appear telephonically for the hearing was
2 granted by Procedural Order.

3 On March 1, 2007, a full public hearing was held before a duly authorized Administrative
4 Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and Staff appeared
5 through counsel at the hearing and presented evidence and testimony. No members of the public
6 appeared to give public comments in this matter. At the conclusion of the hearing, the matter was
7 taken under advisement pending submission of a Recommended Opinion and Order to the
8 Commission.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. In Commission Decision No. 58926 (December 22, 1994), the Commission found that
14 resold telecommunications providers ("resellers") are public service corporations subject to the
15 jurisdiction of the Commission.

16 2. On December 27, 2004, Neutral filed an application seeking a CC&N to provide
17 resold long distance and local exchange, facilities-based local exchange and facilities based long
18 distance exchange and private line telecommunications services in Arizona.

19 3. On January 10, 2007, Neutral amended its application and clarified that it is seeking
20 authority to provide service only to other carriers. Further, Neutral seeks authority to provide
21 wholesale private line service (dedicated access or special access service), facilities-based and resold
22 interexchange services (which provides wholesale transport service to other carriers), and facilities-
23 based and resold switched access service.

24 4. On March 1, 2007, a full public hearing was held on Neutral's amended application.

25 5. According to Neutral's witness¹ testimony at hearing, Neutral will offer tandem
26 switching services in Arizona. He explained that tandem switching services occur when one wireless
27

28 ¹ Mr. Ronald Gavillet, executive vice president and general counsel for Neutral Tandem.

1 end user calls another end user or customer of a competitive carrier. Those calls are currently routed
2 over Qwest's tandem switch and Qwest charges a "transit charge" to route the call. He further stated
3 that Neutral was "created to provide not only a competitive choice for [tandem services], but also
4 increased redundancy and diversity in routing of calls between competitive carriers, which helps the
5 public switch network immensely." (Tr. Pg. 10, lines 4-21)

6 6. According to Staff's Report, Neutral it has nine (9) affiliated companies which are
7 currently operating in twelve (12) states providing telecommunication services.

8 7. At hearing, Neutral's witness testified that as of the date of the hearing Neutral was
9 authorized to provide telecommunication services in over twenty-five (25) states.

10 8. According to Staff's Report, Neutral has four key employees with a combined total
11 experience of 108 years in the telecommunications industry. Therefore, Staff concluded Neutral has
12 the technical capabilities to provide the services it is requesting in its amended application.

13 9. Neutral is a subsidiary of Neutral Tandem, Inc. The Applicant provided audited
14 financial statements for its parent company Neutral Tandem, Inc., showing assets in excess of \$31.2
15 million, equity in excess of \$20.2 million, and a net income of \$208,000 for the year ending
16 December 31, 2005.

17 10. Neutral's application states it will initially rely on the financial resources of its parent
18 company, Neutral Tandem Inc., to provide services in Arizona.

19 11. Staff's Report notes that because Neutral is requesting telecommunications services
20 that are provided solely to other carriers, not retail customers, Staff does not believe a performance
21 bond or irrevocable sight draft letter of credit is necessary for any of the wholesale services Neutral
22 proposes to offer in Arizona.

23 12. According to Staff, Neutral will be initially providing service in areas where
24 incumbent local exchange carriers ("ILEC"), along with various competitive local exchange carriers
25 ("CLECs") and interexchange carriers ("IXC") are providing service.

26 13. Staff believes because Neutral will have competition from both incumbent providers
27 and other competitive providers, and it will not generally be able to exert market power; therefore,
28 the competitive process should result in rates that are just and reasonable.

1 14. Pursuant to A.A.C. R14-2-1109, Neutral may charge rates for service that are not less
2 than its total service long-run incremental costs of providing service.

3 15. Neutral's proposed rates are for competitive services. In general, rates for competitive
4 services are not set according to the rate of return regulation. According to Staff's Report, Neutral's
5 fair value rate base ("FVRB") is zero. Staff reviewed the rates to be charged by Neutral and believes
6 they are just and reasonable as they are comparable to other competitive local exchange carriers, local
7 incumbent carriers, and major long distance carriers operating in Arizona. Staff also believes the
8 rates charged for telecommunication services by Neutral's affiliated companies in other jurisdictions
9 are comparable to rates being proposed for similar services in Arizona. Staff concluded that although
10 Neutral's FVRB was considered, it should not be given substantial weight in this analysis.

11 16. Staff recommends that Neutral's proposed services be classified as competitive
12 because there are alternatives to Neutral's services; Neutral will have to convince customers to
13 purchase its services; Neutral has no ability to adversely affect the competitive local exchange
14 resellers, wholesale interexchange transport service market or private lines service market; and
15 Neutral will therefore have no market power in those markets where alternative providers to
16 telecommunications services exist.

17 17. Staff's Report also indicated that none of Neutral's officers, directors or partners have
18 been involved in any civil or criminal investigations, or formal or informal complaints, and none of
19 its officers, directors, or partners have been convicted of any criminal acts in the past ten (10) years.

20 18. According to Staff's Report, Neutral has not had an application for service denied or
21 revoked in any state, and there have been no formal compliant proceedings and no civil or criminal
22 proceedings involving Neutral.

23 19. Based on the information received from Neutral, Staff concluded that Neutral has
24 adequate capabilities to provide the telecommunications services it is requesting authority to provide.

25 20. Staff recommends approval of Neutral's application for CC&Ns to provide resold and
26 facilities-based wholesale private line services, wholesale interexchange transport services, and
27 switched access. Staff further recommends:
28

- (a) That Neutral comply with all Commission Rules, Orders and other requirements relevant to the provision of the intrastate telecommunications services;
- (b) That Neutral be required to notify the Commission immediately upon changes to its name, address or telephone number;
- (c) That Neutral cooperate with Commission investigations including, but not limited to customer complaints;
- (d) That although Staff considered the fair value rate base information submitted by Neutral, the fair value information provided was not given substantial weight in this analysis; and
- (e) That Neutral be authorized to discount its rates and service charges to the marginal cost of providing the services.

21. Staff further recommends Neutral comply with the following conditions within the timeframes outlined or Neutral's CC&N should be considered null and void, after due process.

- (a) That Neutral docket conforming tariffs for each service it will provide, within 365 days of the effective date of a Decision in this matter or 30 days prior to providing service in Arizona, whichever comes first. Additionally, the tariffs submitted to the Commission should coincide with the application and state that Neutral does not collect advances, deposits, and or/or prepayments from its customers.

22. Staff recommendations, as set forth herein are reasonable.

23. The rates proposed by this filing are for competitive services.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S §§ 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth

1 in its application.

2 6. Applicant is a fit and proper entity to receive a CC&N authorizing it to provide
3 competitive resold and facilities-based wholesale private line services, wholesale interexchange
4 transport services, and switched access telecommunications services in Arizona, subject to Staff's
5 recommendations.

6 7. The telecommunications services that Applicant intends to provide are competitive
7 within Arizona.

8 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
9 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are
10 not less than the Applicant's total service long-run incremental costs of providing the competitive
11 services approved herein.

12 9. Staff recommendations, as set forth herein, are reasonable and should be adopted.

13 10. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and
14 should be approved.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the application of Neutral Tandem Arizona, LLC for a
17 Certificate of Convenience and Necessity for authority to provide competitive resold and facilities-
18 based wholesale private line services, wholesale interexchange transport services and switched access
19 telecommunications services in Arizona, is hereby granted, conditioned upon compliance with Staff's
20 recommendations set forth herein.

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

IT IS FURTHER ORDERED that if Neutral Tandem Arizona, LLC fails to meet the conditions outlined in Finding of Fact No. 21 the Certificate of Convenience and Necessity conditionally granted herein shall become null and void, after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: NEUTRAL TANDEM-ARIZONA, LLC
2 DOCKET NO.: T-04298A-04-0930
3 Michael W. Patten
4 ROSHKA, DeWULF & PATTEN
5 One Arizona Center
400 East Van Buren Street, Ste., 800
Phoenix, Arizona 85004
6 Christopher Kempley, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, Arizona 85007
9 Ernest Johnson, Director
Utilities Division
10 ARIZONA CORPORATION COMMISSION 1200 West Washington Street
Phoenix, Arizona 85007
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28